

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**B.A., by and through his next friend,  
JILL RANDALL,** )  
Plaintiff, )  
v. )  
**STATE OF MISSOURI,** )  
**MISSOURI STATE BOARD  
OF EDUCATION,** )  
**MISSOURI DEPARTMENT OF  
ELEMENTARY AND SECONDARY  
EDUCATION,** )  
**STATE SCHOOLS FOR THE  
SEVERELY HANDICAPPED,** )  
Defendants. )

## **MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiffs' Motion to Consolidate (Docket No. 39).

Cause Number 4:10cv338CDP, currently pending in this Court before the Honorable Catherine Perry. Defendants have not objection to consolidation. Because these cases involve common parties as well as related factual and legal issues, the motion to consolidate will be granted for the following reasons.

On August 10, 2009, Plaintiff filed a four-count Complaint in Cause Number 4:09cv1269TIA requesting a review of the administrative decision of the Hearing Panel empowered by DESE (Count I), and alleging violations of Section 504 of the Rehabilitation Act (Count II), Americans with Disabilities Act (“ADA”) (Count III), and the Equal Protection Clause

under 42 U.S.C. § 1983 (Count IV). Defendants moved to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, for failure to state a claim, pursuant to Rule 12(b)(6), or in the alternative, to make more definite and certain the complaint under Rules 8 and 10 of the Federal Rules of Civil Procedure. On March 24, 2010, the undersigned granted Defendants' Motion to Dismiss with regard to Count IV of Plaintiff's Complaint as against State Defendants, and denied the motion in all other respects.

On February 26, 2010, Plaintiffs Missouri Department of Elementary and Secondary Education and Missouri Schools for the Severely Disabled filed a five-count Complaint in Cause Number 4:10cv338CDP contesting the due process decision asserting res judicata, and B.A. filed a counterclaim alleging violations of the ADA and Section 504.

Plaintiffs filed a Motion to Consolidate seeking consolidation of the two causes of action stemming from the vehicular accident on January 12, 2001. Rule 42(a) provides that this Court may consolidate separate actions when those "actions involv[e] a common question of law or fact." Fed. R. Civ. P. 42(a). Inasmuch as the two causes of action involve a common parties and common issues of fact and law, the undersigned finds that consolidation of the two proceedings will serve the interests of convenience and economy in administration and avoid unnecessary cost or delay. Enterprise Bank v. Saettele, 21 F.3d 233, 235 (8th Cir. 1994); Polito v. Molasky, 123 F.2d 258, 262 (8th Cir. 1941) ("The motion to consolidate the two cases stated that both were pending in the court; that they arose out of the same alleged collision between a fire engine and a truck; and that they both involve a common question of law and facts."). Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs' Motion to Consolidate (Docket No. 39) is GRANTED.

**IT IS FURTHER ORDERED** that this case is consolidated with Missouri Department of Elementary and Secondary Education, Missouri Schools for the Severely Disabled v. B.A., et al., Cause Number 4:10cv338CDP, for all purposes.

**IT IS FURTHER ORDERED** that from this date forward all papers shall be filed in this case only, that no further pleadings or papers be filed in Cause Number 4:10cv338CDP and that Cause Number 4:10cv338CDP is administratively closed.

**IT IS FURTHER ORDERED** that unless previously submitted, no later than July 12, 2010, each party must submit to the Clerk's Office the consent/option form either consenting to the jurisdiction of the United States Magistrate Judge or opting to have the case assigned to a United States District Judge.

**IT IS FURTHER ORDERED** that the parties shall notify the Court in writing, no later than July 12, 2010, of any requested modifications to the Case Management Order (Docket No. 34 /filed February 23, 2010) and to the Order Referring Case to Alternate Dispute Resolution (Docket No. 38/filed May 17, 2010) no later than July 6, 2010.

Dated this 23rd day of June, 2010.

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/s/ Terry I. Adelman  
UNITED STATES MAGISTRATE JUDGE